IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 203 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHIMANBHAI BALCHANDBHAI MAHESHVARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 203 of 2003

MR PRAVIN GONDALIYA for Petitioner No. 1

MR KG SHETH, APP for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 12/03/2003

ORAL JUDGEMENT

By way of this petition, the petitioner has challenged the legality and validity of the order dated 11-7-2002 passed by the learned Additional Sessions

Judge, Sabarkantha at Modasa in Criminal Revision Application No.11 of 2002 confirming the order dated 22-2-2002 passed by the learned Judicial Magistrate (First Class), Modasa in Criminal Case No.405 of 2002 rejecting the application of the petitioner under Sec.451 of the Code of Criminal Procedure.

2. In this matter, this Court vide order dated 21-2-2003 has issued rule making it returnable on 6-3-2003.

3. Heard the learned counsel for the respective parties.

4. The learned counsel for the petitioner has submitted that the petitioner made an application vide Ex.13 in Criminal Case No.405 of 2002 under Sec.451 of the Code of Criminal Procedure in the court of learned Judicial Magistrate (First Class), Modasa, for obtaining custody of the vehicle in question as he is the registered owner of the muddamal tempo model, Tata make Model No.407 bearing registration No.GJ-9-T-8433. However, said application was rejected by the learned Magistrate vide order dated 22-2-2002 against which, the petitioner preferred Criminal Revision Application No.11 of 2002 before the learned Sessions Judge, Sabarkantha, who after hearing both the sides, rejected the said Criminal Revision Application vide order dated 11-7-2002. Being aggrieved by the aforesaid order, present petition has been preferred. .

5. Learned counsel for the petitioner has mainly argued that as per the various decisions of the Hon'ble Apex Court, custody of the vehicle in question is required to be handed over to the petitioner being registered owner of the vehicle in question, on appropriate terms and conditions. He has further submitted that there is no other claimant claiming the custody of the vehicle in question. In support of his submissions, he has drawn my attention towards the judgment reported in 2002(8) Supreme 525, more particularly paras 17 and 18, which reads as under:

"17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications

for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

6. He has also drawn my attention towards another judgment of the Hon'ble Apex Court reported in (2001) 9 SCC 718, wherein it was held at head note as under:

"Criminal Procedure Code, 1973--S.451 Conditional release of vehicle during the trial--Not advisable to keep the vehicle in court compound indefinitely--More advisable to release it to the owner by imposing certain conditions during the pendency of the trial."

7. He has also drawn my attention towards the decision of the Hon'ble Apex Court reported in 2002 SCC (Cri) 1034 wherein it was held at head note as under:

"Criminal Procedure Code, 1973--S.451 Conditional release of vehicle during trial--Subject to certain conditions, custody of vehicle could be entrusted temporarily to its registered owner during the pendency of the trial."

8. Learned APP, however, has vehemently argued that the impugned orders are just and proper and no interference is called for.

9. It clearly appears from the above that the petitioner is claiming the interim custody of the vehicle in question as its sole registered owner. Moreover, no claim is made by any person other than the present petitioner over the vehicle in question. In this view of the matter, if the vehicle in question is not handed over

to the petitioner and is permitted to lie unattended, it may become junk.

10. In view of the aforesaid discussion and also in view of the aforesaid decisions of the Apex Court, interim custody of the vehicle is required to be given to the petitioner being the sole registered owner.

11. This petition is allowed. Order dated 22-2-2002 passed by the Judicial Magistrate (First Class), Modasa below Ex.13 in Criminal Case No.405 of 2002 and order dated 11-7-2002 passed by the learned Sessions Judge, Sabarkantha at Modasa in Criminal Revision Application No.11 of 2002 are hereby quashed and set aside. Custody of the vehicle in question bearing registration No.GJ-9-T-8433 is ordered to be handed over to the petitioner during the pendency of trial on following conditions that the petitioner shall;

[1] produce solvency certificate of Rs.2,00,000/-(Rupees Two Lacs only) before the trial court;

[2] produce the said vehicle before the trial court as and when necessary;

[3] not sell, transfer and/or dispose of the vehicle in any manner whatsoever till final disposal of the criminal case in question;

[4] not use the vehicle for transporting illicit liquor or for any other illegal activities.

12. Rule is made absolute. Direct service is permitted.

radhan/ (R.P.DHOLAKIA,J.)